

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

GREGORY LYNN NORWOOD,  
CDC #J-53407,

Plaintiff,

vs.

JEANNE WOODFORD, M.E.  
BOURLAND, J.G. GIURBINO, J.A.  
JANDA,

Defendant.

Civil No. 07-0057 WQH (JMA)

**ORDER DIRECTING U.S.  
MARSHAL TO EFFECT SERVICE  
OF FIRST AMENDED COMPLAINT  
PURSUANT TO FED. R. CIV. P.  
4(c)(2) AND 28 U.S.C. § 1915(d)**

**I. Procedural History**

Plaintiff, an inmate currently incarcerated at the California Correctional Institution in Tehachapi, California and proceeding pro se, filed a civil rights Complaint pursuant to 42 U.S.C. § 1983 on January 8, 2007. In Plaintiff's original Complaint, he alleges that he was placed in administrative segregation ("ad-seg") while incarcerated at Calipatria State Prison in violation of his Fourteenth Amendment due process rights. Plaintiff also alleged that Calipatria prison officials violated his Eighth Amendment rights when they deprived him of outdoor exercise for a lengthy period of time. Plaintiff sought declaratory and injunctive relief as well as monetary damages.

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1 Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a), but instead  
 2 submitted a Motion to Proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) [Doc.  
 3 No. 3]. On March 15, 2007, this Court granted Plaintiff’s Motion to Proceed IFP but  
 4 simultaneously dismissed his Complaint for failing to state a claim upon which relief could be  
 5 granted. *See* Mar. 15, 2007 Order at 8-9. Nonetheless, the Court granted Plaintiff forty five  
 6 days to submit a First Amended Complaint correcting the deficiencies of pleading noted in the  
 7 Court’s Order. *Id.* at 9. On April 16, 2007, Plaintiff filed his First Amended Complaint  
 8 (“FAC”).

## 9 **II. Sua Sponte Screening per 28 U.S.C. § 1915(e)(2) and § 1915A**

10 As the Court stated in its previous Order, the Prison Litigation Reform Act obligates the  
 11 Court to review complaints filed by all persons proceeding IFP and those, like Plaintiff, who are  
 12 “incarcerated or detained in any facility [and] accused of, sentenced for, or adjudicated  
 13 delinquent for, violations of criminal law or the terms or conditions of parole, probation, pretrial  
 14 release, or diversionary program,” “as soon as practicable after docketing.” *See* 28 U.S.C.  
 15 §§ 1915(e)(2) and 1915A(b). Under these provisions, the Court must sua sponte dismiss  
 16 prisoner and all other IFP complaints, or any portions thereof, which are frivolous, malicious,  
 17 fail to state a claim, or which seek damages from defendants who are immune. *See* 28 U.S.C.  
 18 §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)  
 19 (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443, 446 (9th Cir. 2000) (§ 1915A).

20 Before amendment by the PLRA, the former 28 U.S.C. § 1915(d) permitted sua sponte  
 21 dismissal of only frivolous and malicious claims. *Lopez*, 203 F.3d at 1126, 1130. However 28  
 22 U.S.C. §§ 1915(e)(2) and 1915A now mandate that the court reviewing an IFP or prisoner’s suit  
 23 make and rule on its own motion to dismiss before directing that the Complaint be served by the  
 24 U.S. Marshal pursuant to FED.R.CIV.P. 4(c)(2). *Id.* at 1127 (“[S]ection 1915(e) not only permits,  
 25 but requires a district court to dismiss an in forma pauperis complaint that fails to state a  
 26 claim.”); *see also Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (discussing  
 27 § 1915A).

1 “[W]hen determining whether a complaint states a claim, a court must accept as true all  
2 allegations of material fact and must construe those facts in the light most favorable to the  
3 plaintiff.” *Resnick*, 213 F.3d at 447; *Barren*, 152 F.3d at 1194 (noting that § 1915(e)(2)  
4 “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

5 Here, the Court finds that Plaintiff’s Eighth Amendment claims in his First Amended  
6 Complaint survives the sua sponte screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b),  
7 and that Plaintiff is therefore automatically entitled to U.S. Marshal service on his behalf. *See*  
8 *Lopez*, 203 F.3d at 1126-27; 28 U.S.C. § 1915(d) (“The officers of the court shall issue and  
9 serve all process, and perform all duties in [IFP] cases.”); FED.R.CIV.P. 4(c)(2) (providing that  
10 “service be effected by a United States marshal, deputy United States marshal, or other officer  
11 specially appointed by the court . . . when the plaintiff is authorized to proceed *in forma pauperis*  
12 pursuant to 28 U.S.C. § 1915.”).

### 13 **III. Conclusion and Order**

14 Good cause appearing, **IT IS HEREBY ORDERED** that:

15 1. The United States Marshal shall serve a copy of the First Amended Complaint and  
16 summons upon Defendants as directed by Plaintiff on U.S. Marshal Form 285. All costs of  
17 service shall be advanced by the United States. *See* 28 U.S.C. § 1915(d); FED.R.CIV.P. 4(c)(2).

18 2. Defendants are thereafter **ORDERED** to reply to the First Amended Complaint  
19 within the time provided by the applicable provisions of Federal Rule of Civil Procedure 12(a).  
20 *See* 42 U.S.C. § 1997e(g)(2) (while Defendants may occasionally be permitted to “waive the  
21 right to reply to any action brought by a prisoner confined in any jail, prison, or other  
22 correctional facility under section 1983,” once the Court has conducted its sua sponte screening  
23 pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus, has made a preliminary  
24 determination based on the face of the pleading alone that Plaintiff has a “reasonable  
25 opportunity to prevail on the merits,” Defendants are required to respond).

26 3. Plaintiff shall serve upon Defendants or, if appearance has been entered by  
27 counsel, upon Defendants’ counsel, a copy of every further pleading or other document  
28 submitted for consideration of the Court. Plaintiff shall include with the original paper to be

1 filed with the Clerk of the Court a certificate stating the manner in which a true and correct copy  
2 of any document was served on Defendants, or counsel for Defendants, and the date of service.  
3 Any paper received by the Court which has not been filed with the Clerk or which fails to  
4 include a Certificate of Service will be disregarded.

5 **IT IS SO ORDERED.**

6 DATED: May 1, 2007

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8 **WILLIAM Q. HAYES**  
9 United States District Judge  
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